

## SENATE BILL NO. 62

INTRODUCED BY PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT DISPOSITIONS OF CONTESTED CASES UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT BE IN WRITING; AND AMENDING SECTIONS 2-4-603, 2-4-614, 2-4-623, AND 2-4-702, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-4-603, MCA, is amended to read:

**"2-4-603. Informal disposition and hearings -- waiver of administrative proceedings -- recording and use of settlement proceeds.** (1) (a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. A stipulation, agreed settlement, consent order, or default that disposes of a contested case must be in writing.

(b) Unless otherwise provided by law, if a stipulation, agreed settlement, consent order, or default results in a monetary settlement involving an agency or the state, settlement proceeds must be deposited in the account or fund in which the penalty, fine, or other payment would be deposited if the contested case had proceeded to final decision. If there is no account or fund designated for the fine, penalty, or payment in the type of action, then the settlement must be deposited in the general fund.

(c) If a stipulation, agreed settlement, consent order, or default results in a nonmonetary settlement involving an agency or the state, settlement proceeds, whether received by the state or a third party, must be recorded in a nonstate, nonfederal state special revenue account established pursuant to 17-2-102(1)(b)(i) for the purpose of recording nonmonetary settlements.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then ~~utilize~~ use informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition must contain an agreed statement of facts and a statement of the legal issues

1 or contentions of the parties upon which the court, together with the additions it may consider necessary to fully  
2 present the issues, may make its decision."

3  
4 **Section 2.** Section 2-4-614, MCA, is amended to read:

5 **"2-4-614. Record -- transcription.** (1) The record in a contested case ~~shall~~ must include:

- 6 (a) all pleadings, motions, and intermediate rulings;  
7 (b) all evidence received or considered, including a stenographic record of oral proceedings when  
8 demanded by a party;  
9 (c) a statement of matters officially noticed;  
10 (d) questions and offers of proof, objections, and rulings ~~thereon~~ on those objections;  
11 (e) proposed findings and exceptions;  
12 (f) any decision, opinion, or report by the ~~hearing~~ hearings examiner or agency member presiding at  
13 the hearing, which must be in writing;  
14 (g) all staff memoranda or data submitted to the ~~hearing~~ hearings examiner or members of the agency  
15 as evidence in connection with their consideration of the case.

16 (2) The stenographic record of oral proceedings or any part ~~thereof shall~~ of the stenographic record  
17 must be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription  
18 ~~shall~~ must be paid by the requesting party."

19  
20 **Section 3.** Section 2-4-623, MCA, is amended to read:

21 **"2-4-623. Final orders -- notification -- availability.** (1) A final decision or order adverse to a party in  
22 a contested case ~~shall~~ must be in writing ~~or stated in the record~~. A final decision ~~shall~~ must include findings of  
23 fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, ~~shall~~ must be  
24 accompanied by a concise and explicit statement of the underlying facts supporting the findings.

25 (2) Findings of ~~facts shall~~ fact must be based exclusively on the evidence and on matters officially  
26 noticed.

27 (3) Each conclusion of law ~~shall~~ must be supported by authority or by a reasoned opinion.

28 (4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision ~~shall~~  
29 must include a ruling upon each proposed finding.

30 (5) Parties ~~shall~~ must be notified either personally or by mail of any decision or order. Upon request,

1 a copy of the decision or order ~~shall~~ must be delivered or mailed ~~forthwith~~ to each party and to his the party's  
2 attorney of record.

3 (6) Each agency shall index and make available for public inspection all final decisions and orders,  
4 including declaratory rulings under 2-4-501. ~~No such~~ An agency decision or order is not valid or effective against  
5 any person or party, ~~nor may~~ and it may not be invoked by the agency for any purpose until it has been made  
6 available for public inspection as ~~herein~~ required in this section. This provision is not applicable in favor of any  
7 person or party who has actual knowledge ~~thereof~~ of the decision or order or when a state statute or federal  
8 statute or regulation prohibits public disclosure of the contents of a decision or order."

9  
10 **Section 4.** Section 2-4-702, MCA, is amended to read:

11 **"2-4-702. Initiating judicial review of contested cases.** (1) (a) A person who has exhausted all  
12 administrative remedies available within the agency and who is aggrieved by a final WRITTEN decision in a  
13 contested case is entitled to judicial review under this chapter. This section does not limit ~~utilization~~ use of or the  
14 scope of judicial review available under other means of review, redress, relief, or trial de novo provided by  
15 statute.

16 (b) A party who proceeds before an agency under the terms of a particular statute may not be precluded  
17 from questioning the validity of that statute on judicial review, but the party may not raise any other question not  
18 raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure  
19 to raise the question before the agency.

20 (2) (a) Except as provided in subsection (2)(c), proceedings for review must be instituted by filing a  
21 petition in district court within 30 days after service of the final WRITTEN decision of the agency or, if a rehearing  
22 is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or  
23 subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has  
24 the petitioner's principal place of business or where the agency maintains its principal office. Copies of the  
25 petition must be promptly served upon the agency and all parties of record.

26 (b) The petition must include a concise statement of the facts upon which jurisdiction and venue are  
27 based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in  
28 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to  
29 which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

30 (c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather

1 than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court  
2 in the same manner as the provisions of this part apply to the district court.

3 (d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title  
4 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be  
5 located or where the action is proposed to occur.

6 (3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the  
7 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers  
8 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without  
9 notice only if the provisions of 27-19-315, ~~27-19-316~~, and through 27-19-317 are met.

10 (4) Within 30 days after the service of the petition or within further time allowed by the court, the agency  
11 shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under  
12 review. By stipulation of all parties to the review proceedings, the record may be shortened. A party  
13 unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs.  
14 The court may require or permit subsequent corrections or additions to the record."

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